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**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH**

CWP No.20198 of 2013

Date of Decision: 24.08.2023

Ram Kumar

..... Petitioner

Versus

State of Haryana and others

..... Respondents

CORAM: HON'BLE MR. JUSTICE RAJESH BHARDWAJ

Present: Mr. Balkar Singh, Advocate
for the petitioner.

Mr. Rajneesh Chadwal, AAG, Haryana.

Mr. R. P. Singh Ahluwalia, Advocate
for respondent No.4

RAJESH BHARDWAJ J. (ORAL)

Present writ petition has been filed for issuance of a writ in the nature of certiorari for quashing the order dated 01.07.2013 (Annexure P-1) passed by respondent No.1 and order dated 28.03.2012 (Annexure P-2) passed by respondent No.2 being illegal, arbitrary and against the principles of natural justice. It is further prayed for directing respondents No.1 to 3 to appoint the petitioner as General Category Lambardar of village Kishanpura, District Yamuna Nagar.

Learned counsel for the petitioner has submitted that on the death of Ram Chander, Lambardar, the post of Lambardar in general category fell vacant in village Kishanpura, District Yamuna Nagar. For

filling up the post, the process for appointment of new Lambardar was initiated and mustri munadi was conducted in the village. Seven applications were received for the same. Later on, four candidates had withdrawn their applications and one of the candidates, being absent, was proceeded *ex parte* and hence, only two candidates, namely, Suresh Kumar, son of late Ram Chander and Ram Kumar, son of Dhanu Ram remained in the fray. The opportunities were afforded to both the candidates to produce the evidence in support of their claim to the post of Lambardar. The Tehsildar, Chhachhrauli, recommended the name of Suresh Kumar i.e. respondent No.4 for the appointment of new Lambardar and send his report to the SDO (Civil), Bilaspur. However, SDO (Civil), Bilaspur, after hearing both the sides, recommended the name of Ram Kumar-petitioner to be suitable for the post of Lambardar. On scrutiny of their candidature, it was found that respondent No.4, Suresh Kumar was 58 years of age and was middle pass. He owned 40 Kanals of agricultural land in the village. He had the experience of Lambardari being son of deceased Lambardar, Ram Chander. It is further submitted that the petitioner, Ram Kumar was 52 years of age and he had passed B.A. part II. He owned 18 Kanals of agricultural land in the village. He further argued that learned Collector after comparing the *interse* merits of both the candidates, found the petitioner to be more suitable and thus, appointed him as Lambardar of general category vide his order dated 01.05.2011. He submits that aggrieved by the same, respondent No.4 filed an appeal before the Commissioner, Ambala Division, Ambala. He submits that the learned

Commissioner without appreciating the evidence on record, illegally accepted the appeal filed by respondent No.4 and thus, appointed respondent No.4 as Lambardar of the village vide impugned order dated 28.03.2012. He submits that aggrieved by the same, the petitioner filed the revision petition before the learned Financial Commissioner, Haryana but the learned Financial Commissioner also fell in error in not appreciating the evidence on record and the law settled and thus, illegally declined the revision filed by the petitioner vide impugned order dated 01.07.2013. He submits that admittedly the petitioner is younger in age than respondent No.4. Besides this, he was more qualified than respondent No.4. He has also vehemently argued that as per the New Amended Rules for the appointment of Lambardar dated 23.07.2008, the qualification of Lambardar should be preferably middle pass. He submits that respondent No.4 has not even appended any authentic proof regarding his qualification and thus, he was not even middle pass. He submits that the petitioner being young in age and being more qualified had a better claim than respondent No.4. He submits that though FIR No.79 dated 30.09.2011 under Sections 323, 325, 34 IPC at Police Station Khizrabad, District Yamuna Nagar was registered against the petitioner, however, he was kept in Col. No.2 by the Investigating Agencies. He further submits that the allegations of making default in the payment of loan are without any basis as he has never remained a defaulter.

Learned counsel for respondent No.4 has opposed the submissions made by learned counsel for the petitioner. He submits that the

petitioner had been prosecuted in FIR No.79, dated 30.09.2011 and even if he was kept in Col. No.2, his antecedents were not better than respondent No.4. He has submitted that the petitioner had taken various loans from the bank and he was the chronic defaulter. He submits that the impugned orders suffer from no illegality as the Collector had illegally appointed the petitioner and the same being patently illegal, was rightly set aside by the Commissioner by appointing respondent No.4. He further submits that learned Financial Commissioner had rightly dismissed the revision filed by the petitioner. He submits that the petition being devoid of any merit deserves to be dismissed.

I have heard learned counsel for both the parties and perused the material on record.

After hearing learned counsel for both the parties, it is evident that on the death of Ram Chander, Lambardar, the post of Lambardar in general category fell vacant in village Kishanpura, District Yamuna Nagar. The process for appointment of new Lambardar was initiated and mustri munadi was conducted. Seven applications were received and later on four candidates had withdrawn their applications and one of the candidates being absent was proceeded *ex parte* and hence, only two candidates, namely, Suresh Kumar, son of Ram Chander and Ram Kumar, son of Dhanu Ram, being the respondent No.4 and petitioner, remained in the fray. The Tehsildar, Chachroli, recommended the name of respondent No.4 for the post of new Lambardar and sent his report to the SDO (Civil), Bilaspur. However, SDO (Civil), Bilaspur recommended the name of

petitioner to be suitable for the post of Lambardar. Thus, the petitioner was appointed as Lambardar by the learned Collector on comparing the *interse* merits of both the candidates vide his order dated 01.05.2011. Aggrieved by the same, respondent No.4 filed an appeal before the Commissioner. However, the learned Commissioner found perversity in the order of Collector and thus, not only set aside the order passed by the Collector but also appointed respondent No.4 as Lambardar. The Financial Commissioner has also dismissed the revision filed by the petitioner. There is no gain saying that the order of Collector cannot be interfered by the higher Courts in a casual manner. However, if there appears to be any perversity, the same can be interfered with. The issue pertaining to the fact that whether the Appellate or Revisional Authorities can substitute their choice in place of the choice made by the Collector is already pending adjudication before the Full Bench of this Court. Learned Commissioner has not only set aside the order passed by the Collector but appointed respondent No.4 as Lambardar. The Financial Commissioner also fell in error in not appreciating the issue involved and thus, upheld the impugned order passed by the Commissioner. It appears that both the Appellate and Revisional Authorities found suspicion in the antecedents of the petitioner. However, directing respondent No.4 to be appointed as Lambardar of village Kishanpura, District Yamuna Nagar is unsustainable in the eyes of law as the issue is already pending consideration before the Full Bench of this Court.

Keeping in view the overall facts and circumstances of the case and the law settled, this Court finds that the ends of justice would be met if the case is decided afresh by the Collector by appreciating the complete evidence on record regarding both the candidates i.e. the petitioner and respondent No.4. Hence, the impugned orders dated 01.07.2013 (Annexure P-1), 28.03.2012 (Annexure P-2) and order dated 01.05.2011 (Annexure P-3) are hereby set aside. The case is remanded to the Collector for deciding afresh after hearing both the sides without being influenced by his earlier order dated 01.05.2011 in accordance with law within a period of two months from the date of receipt of certified copy of this order.

In view of the above position, present petition stands disposed of.

24.08.2023

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**(RAJESH BHARDWAJ)
JUDGE**

Whether speaking/reasoned	:	Yes/No
Whether reportable or not	:	Yes/No